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DATE MAILED: 10/06/2003

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,375	03/05/2002	Nicholas Sotiropoulos	P21,544-C USA	7947
7590 10/06/2003			EXAMINER	
Synnestvent & Lechner LLP			FRECH, KARL D	
2600 ARAMARK Tower 1101 Market Street			ART UNIT	PAPER NUMBER
Philadelphia, PA 19107-2950			2876	

Please find below and/or attached an Office communication concerning this application or proceeding.

1) Responsive to communication(s) filed on 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-5 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on 29 August 2001 is/are: a) accepted or b) objected to by the Examiner. Application Papers 9) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in his National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) The translation of the foreign language provisional application has been received. 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		1	e Re				
Office Action Summary Examiner Art Unit 2876 287		Application No.	Applicant(s)				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.	ĩ'	09/942,375	SOTIROPOULOS ET AL.				
- The MALLING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time myle be available under the provisions of 3 CER 1.136(a). In or event, however, may a risely be timely filled to the provision of the provision	Office Action Summary	Examiner	Art Unit				
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Editations of time may be available under the provisions of 37 CFR 1.13(d), in no overt, however, may a reply be limitly filled Editations of time may be available under the provisions of 37 CFR 1.13(d), in no overt, however, may a reply be limitly filled If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days, will be considered timely. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days, and the page of the communication. False to reply within the set of extended period for reply will, by statutory minimum of thirty (30) days, and the communication. False to reply within the set of extended period for reply will, by statutory minimum of the mailing date of this communication. False to reply within the set of extended period for reply will, by statutory minimum of thirty (30) days will be communication. False to reply within the set of extended period for reply will, by statutory minimum of thirty (30) days will be considered timely. If the period for reply specified above is the stand than the set of the communication. False to reply within the set of extended period for reply will, by statutory minimum of thirty (30) days will be considered timely. If the period for reply specified to the set of the communication. The period for reply specified to a set of the communication. Application is FINAL. Disposition of Claims Application period for reply and the set of the communication. Claim(s)							
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		5) Notice					

Application/Control Number: 09/942,375

Art Unit: 2876

1. The preliminary amendments filed 8/29/2001 and 2/11/2002 have been entered as papers numbers 3 and 7 respectively.

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 1-5 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-5 of prior U.S. Patent No. 6,364,871. This is a double patenting rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl D Frech whose telephone number is (703) 305 3491. The examiner can normally be reached on maxi-flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (703) 305 3503. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0956.

Karl D Frech Primary Examiner Art Unit 2876